

Issue Paper Number 00-044



BOARD OF EQUALIZATION  
**KEY AGENCY ISSUE**

- ☐ Board Meeting
- ☐ Business Taxes Committee
- ☐ Customer Services and  
Administrative Efficiency  
Committee
- ☒ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

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## **PROPERTY AT THE LOCATION PROPERTY TAX RULE 305.3**

### **I. Issue**

How should Property Tax Rule 305.3 define the phrase "property at the location" as used in the equalization provisions of Revenue and Taxation Code section 469?

### **II. Staff Recommendation**

Staff recommends that Property Tax Rule 305.3 define "property at the location" to mean the property in the appraisal unit of the original assessment for which the property is subject to escape assessment as a result of the section 469 audit.

### **III. Other Alternative(s) Considered**

1. "Property at the location" means all property at the location of the audited taxpayer. (California Taxpayers' Association)
2. "Property at the location" means any property at the location at which the personal property and/or fixtures are subject to escape assessment as a result of the section 469 audit. (Some County Assessors and County Counsels)

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## **IV. Background**

Under Government Code section 15606, subdivision (c), the Board is given the power and duty to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. Pursuant to that authority, the Board directed staff to draft a new section 305.3 of Title 18 of the California Code of Regulations, Subchapter 3, Local Equalization Property Tax Rules, to interpret provisions of Revenue and Taxation Code section 469 relating to assessment appeal rights and appeals boards' jurisdiction to equalize escape assessments resulting from audits performed pursuant to that section.

Revenue and Taxation Code section 469 requires that a county assessor audit at least once each four years the assessable trade fixtures and business tangible personal property with a full value of \$400,000 or more owned, claimed, possessed or controlled by a taxpayer engaged in a profession, trade, or business. Section 469 further provides in the fourth paragraph:

If the result of an audit for any year discloses property subject to an escape assessment, then the original assessment of all property of the assessee at the location of the profession, trade, or business for that year shall be subject to review, equalization and adjustment by the county board of equalization or assessment appeals board pursuant to Chapter 1 (commencing with Section 1601) of Part 3 of this division, except in those instances when the property had previously been equalized for the year in question.

The paragraph was added by 1978 legislation amending section 469. Prior to the amendment, a taxpayer could only appeal escape assessments following an audit. In a letter to Governor Edmund G. Brown, Jr., dated August 31, 1978, the sponsors of the amendment (the Taxation Section of the California State Bar) expressed the intent of the legislation as follows:

The bill would allow a business taxpayer of property tax to have his entire assessment for a particular year at a business premises to be reviewed and equalized when the assessor by reason of an audit proposes an escape assessment. The bill is needed because many taxpayers do not protest assessments when the overall assessment at a business premises seems fair, even though some components are over-assessed and some under-assessed. Then, years later the assessor by reason of audit, proposes an escape assessment for the under-assessed component. Under the present law, the taxpayer has no redress for the over-assessed component at the late date of the proposed escape assessment.

Thus, the amendment was intended to address situations where:

- A taxpayer was satisfied with an overall property assessment, even while recognizing that he/she was not in agreement with the assessor's allocation to various parts of the overall assessment.
- Subsequently, the assessor conducted an audit that resulted in an escape assessment, thereby increasing the overall assessment for the property for a particular year.
- Following the audit, the taxpayer could only challenge the escape assessment even though the taxpayer had previously recognized that the assessment allocations were incorrect.

A difference of opinion over the application of the foregoing provision has led to the proposal for a new Property Tax Rule to interpret and to make specific its language. Property Taxes Department staff and

**FORMAL ISSUE PAPER**

Legal Division staff drafted proposed Property Tax Rule 305.3 after receiving input from the California Association of Clerks and Election Officials, California Assessors' Association, County Counsels' Association of California, California Taxpayers' Association, and industry representatives.

On February 25, 2000, staff held a meeting in Sacramento with interested parties for discussions in an effort to reach agreement on as many issues as possible. Staff and interested parties were unable to reach agreement on several key issues and, therefore, it was decided that the rule writing process would be accomplished in two stages.

First, each unresolved issue and the parties' positions on each issue would be presented to the Property Tax Committee for decision. Second, the rule would be redrafted in accordance with the Board's positions on the issues, and then resubmitted to interested parties for review and comment. The redrafted Property Tax Rule would then be presented to the Property Tax Committee for approval of the language.

At the Property Tax Committee meeting on April 5, 2000, the Board was asked to decide five major unresolved issues. However, at the request of some interested parties, the Members decided at the April 5 meeting to delay the rulemaking process until November 1, 2000 because the case of *Heavenly Valley v. El Dorado County Board of Equalization* was pending before the court of appeal. At issue in the case is the proper interpretation of some aspects of the equalization provisions of Revenue and Taxation Code section 469. The oral arguments in the *Heavenly Valley* case are now set for hearing on November 13, 2000.

As instructed at the April 5 Property Tax Committee meeting, staff now requests direction on five major issues surrounding the equalization provisions of section 469 of the Revenue and Taxation Code which will be presented in this issue paper and four other issue papers.

## **V. Staff Recommendation**

"Property at the location" means all property in the appraisal unit that was originally assessed and for which some or all property is subject to escape assessment as the result of the section 469 audit.

### **A. Description of the Staff Recommendation**

Staff's recommendation defines the "location of the profession, trade or business" as the appraisal unit originally valued by the assessor and assessed to the audited taxpayer rather than solely in terms of a single physical location. Property Tax Rule 324, subsection (b) defines an appraisal unit as "a collection of assets that functions together, and that persons in the marketplace commonly buy and sell as a single unit or that is normally valued in the marketplace separately from other property, or that is specifically designated as such by law." If the original assessment included multiple parcels which the assessor determined should be valued together as a unit, then "location" for purpose of equalization includes all property included in that appraisal unit.

### **B. Pros of the Staff Recommendation**

Staff's recommendation is consistent with the intent of section 469 which is to ensure that value is correctly allocated among all classes of property that are assessed as part of the same appraisal unit. When an appraisal unit is originally assessed, the value of each class of property is assessed and the total value of those assessments is enrolled. If the assessee is satisfied with the total value for all property, then no appeal is filed. Subsequently, if the result of an audit discloses that one class of property is underassessed and subject to escape assessment, the total value of the property will then be

increased. Thus, the assessee should have the opportunity to appeal all classes of property in order to ensure that the value for the entire appraisal unit is correct.

### **C. Cons of the Staff Recommendation**

- Staff's recommendation restricts the equalization provisions afforded the taxpayer under section 469. The law does not limit the equalization provisions to only that property of the assessee that is in the same appraisal unit as the property that escaped assessment. Instead, the law provides "[I]f the result of an audit for any year discloses property subject to an escape assessment, then the original assessment of all property of the assessee at the location of the profession, trade, or business for that year shall be subject to review, equalization and adjustment by the county board of equalization or assessment appeals board." Thus, the law contemplates allowing equalization of all property of the assessee at the location, not only that property in the same appraisal unit as the property that escaped assessment. (*California Taxpayers' Association's contention*)
- Staff's recommendation expands the equalization provisions afforded the taxpayer under section 469. "[A]ll property of the assessee at the location" is intended to apply to only that property location at which the personal property and/or fixtures are subject to escape assessment. Thus, if property that escapes assessment is located on a certain parcel, the taxpayer may appeal the assessment of that parcel but not other parcels at that location or within that appraisal unit. (*Some County Assessors' and County Counsels' contention*)

### **D. Statutory or Regulatory Change**

Action by the Board to adopt a Property Tax Rule interpreting the equalization provisions of section 469 will add section 305.3 to Title 18 of the California Code of Regulations, Subchapter 3.

### **E. Administrative Impact**

None

### **F. Fiscal Impact**

#### **1. Cost Impact**

None

#### **2. Revenue Impact**

None

### **G. Taxpayer/Customer Impact**

Adoption of a Property Tax Rule interpreting the equalization provisions of section 469 will affect administrative procedures for the assessment appeals process at the county level and the functions of the clerks of the appeals boards, appeals board members, county assessors, county counsels, and each taxpayer seeking a reduction in assessment of his or her property's value following an audit conducted pursuant to section 469.

### **H. Critical Time Frames**

There is no critical time frame for adoption of a Property Tax Rule interpreting section 469 since a county assessor conducts audits pursuant to section 469 on an ongoing basis. The 60-day period for filing an application appealing the result of an audit disclosing property subject to an escape

assessment commences on receipt of the proper notice of the escape assessment. Consequently, the equalization provisions of section 469 provide for the filing of an application for an equalization hearing before a local board of equalization or county assessment appeals board throughout the year.

## **VI. Alternative 1**

### **A. Description of the Alternative 1 (California Taxpayers' Association proposal)**

"Property at the location" means all property at the location of the audited taxpayer.

### **B. Pros of Alternative 1**

The right to an equalization hearing extends to the property at the location being audited, regardless of whether it is in the same appraisal unit as the property subject to escape assessment. Thus, for example, if a business at one location owns a parcel with business property and several other parcels that are not used in the business activity, the taxpayer may nonetheless seek equalization of these other parcels since they are at the location of the business.

### **C. Cons of Alternative 1**

- It is inconsistent with the intent of section 469 which is to ensure that value is correctly allocated among all classes of property that are assessed as part of the same appraisal unit. In the above example, if the other parcels were not assessed as part of the same appraisal unit as the parcel with the business property, then there can be no chance of misallocation of value between those parcels and the parcel with business property, hence no need for equalization of the other parcels upon finding an escape assessment at the location of the audited business property.

It does not provide a definition of "location" as intended by section 469. Thus, it does not serve the purpose of proposed Rule 305.3 which is to interpret section 469. (*Staff's contention*)

- It expands the equalization provisions afforded the taxpayer under section 469. "[A]ll property of the assessee at the location" is intended to apply to only that property location at which the personal property and/or fixtures are subject to escape assessment. Thus, if property escapes assessment at one location or parcel this affords the taxpayer the opportunity of equalization of only this one parcel, and not others at that location or within that appraisal unit. (*Some County Assessors' and County Counsels' contention*)

### **D. Statutory or Regulatory Change**

Action by the Board to adopt a Property Tax Rule interpreting the equalization provisions of section 469 will add section 305.3 to Title 18 of the California Code of Regulations, Subchapter 3.

### **E. Administrative Impact**

None

### **F. Fiscal Impact**

#### **1. Cost Impact**

None

#### **2. Revenue Impact**

None

### **G. Taxpayer/Customer Impact**

Adoption of a Property Tax Rule interpreting the equalization provisions of section 469 will affect administrative procedures for the assessment appeals process at the county level and the functions of the clerks of the appeals boards, appeals board members, county assessors, county counsels, and each taxpayer seeking a reduction in assessment of his or her property's value following an audit conducted pursuant to section 469.

### **H. Critical Time Frames**

There is no critical time frame for adoption of a Property Tax Rule interpreting section 469 since a county assessor conducts audits pursuant to section 469 on an ongoing basis. The 60-day period for filing an application appealing the result of an audit disclosing property subject to an escape assessment commences on receipt of the proper notice of the escape assessment. Consequently, the equalization provisions of section 469 provide for the filing of an application for an equalization hearing before a local board of equalization or county assessment appeals board throughout the year.

## **VII. Alternative 2**

### **A. Description of the Alternative 2 (Some Assessors' and County Counsels' Proposal)**

"Property at the location" means any property at the location at which the personal property and/or fixtures are subject to escape assessment as a result of the section 469 audit.

### **B. Pros of Alternative 2**

This alternative is consistent with the plain language of Sections 469 and 1605 which provide, in part, that if the audit discloses "property subject to escape assessment, then the original assessment of all property of the assessee at the location of the profession, trade or business . . ." shall be subject to equalization.

### **C. Cons of Alternative 2**

It is inconsistent with the intent of section 469 which is to ensure that value is correctly allocated among all classes of property that are assessed as part of the same appraisal unit. The appraisal unit is comprised of the location or locations that are the subject to audit. Alternative 1 suggests that a taxpayer could seek equalization of only the property at which the escaped property is located, regardless of whether there is other property or other parcels included in the appraisal unit of the original assessment. (*Staff's contention*)

It could prevent taxpayers from being able to seek equalization of parcels at the location of the business simply because the property subject to escape is not located on that specific parcel. (*California Taxpayers' Association's contention*)

### **D. Statutory or Regulatory Change**

Action by the Board to adopt a Property Tax Rule interpreting the equalization provisions of section 469 will add section 305.3 to Title 18 of the California Code of Regulations, Subchapter 3.

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**E. Administrative Impact**

None

**F. Fiscal Impact**

**1. Cost Impact**

None

**2. Revenue Impact**

None

**G. Taxpayer/Customer Impact**

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**H. Critical Time Frames**

There is no critical time frame for adoption of a Property Tax Rule interpreting section 469 since a county assessor conducts audits pursuant to section 469 on an ongoing basis. The 60-day period for filing an application appealing the result of an audit disclosing property subject to an escape assessment commences on receipt of the proper notice of the escape assessment. Consequently, the equalization provisions of section 469 provide for the filing of an application for an equalization hearing before a local board of equalization or county assessment appeals board throughout the year.

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